STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: WASHINGTON

REIMBURSEMENT FOR PHARMACY SERVICES

I. General Information

A. Prescription drug reimbursement is based on (1) the standard 11-digit National Drug Code (NDC) (5-4-2 format), and (2) the quantity filled.

B. Total reimbursement for a prescription drug does not exceed the lowest of:

(1) Estimated acquisition cost (EAC) plus a dispensing fee;
(2) Maximum allowable cost (MAC) plus a dispensing fee;
(3) Federal Upper Limit (FUL) plus a dispensing fee;
(4) Actual acquisition cost (AAC) plus a dispensing fee for drugs purchased under section 340 B of the Public Health Services (PHS) Act and dispensed to medical assistance clients; or
(5) The provider's usual and customary charge to the non-Medicaid population.

II. Payment

Providers must bill only after providing a service to an eligible client. Delivery of a service or product does not guarantee payment. For example, no payment is made when:

- The request for payment is not presented within the 365 day billing limit.
- The service or product is not medically necessary or is not covered;
- The client has third party coverage and the third party pays as much as or more than, the state allows for the service or product; or
- The service or product is covered in the managed care capitation rate.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: WASHINGTON

REIMBURSEMENT FOR PHARMACY SERVICES (Cont.)

III. Estimated Acquisition Cost (EAC)

A. First DataBank derives the Average Wholesale Price (AWP) of each product based on information they receive directly from each manufacturer or labeler. The appropriate percentage of the AWP that represents the Estimated Acquisition Cost (EAC) is determined.

B. Currently applied EAC percentages, effective for dates of service on and after 8/1/02, are:

- AWP-14% for single source drugs;
- AWP-14% for multisource drugs with four or fewer manufacturers/labelers;
- AWP-50% for multisource drugs with five or more manufacturers/labelers and no MAC or FUL; and
- 100% of certified AWP for infusion, injectable, and inhalation drugs with certified AWPs.

C. For the contracted mail-order delivery service of prescription drugs, the contactor/pharmacy guarantees that the average annual multisource discount, in aggregate for all drugs dispensed, will be at least 60% of AWP. An annual reconciliation will be performed and the contractor will pay any shortfall on a dollar-for-dollar basis. Contracted mail order delivery service for prescription drugs started 2/1/03. The EAC percentages for the contractor/pharmacy are:

- AWP-19% for single source drugs; and
- AWP-15% for multisource drugs.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: WASHINGTON

REIMBURSEMENT FOR PHARMACY SERVICES (Cont.)

IV. Dispensing Fees

A. A three-tier dispensing fee structure is used, with an adjusted fee allowed for pharmacies that participate in the Modified Unit Dose and/or True Unit Dose programs. The exception to the tiered dispensing fee system is the contractor/pharmacy that contracts to provide mail-order delivery service for prescription drugs; the mail-order dispensing fee is determined as a result of the competitive procurement process.

B. Listed below are the dispensing fee allowances for each drug ingredient in compounded and non-compounded prescriptions for pharmacies, effective for dates of service on and after 7/1/02:

- High-volume pharmacies (over 35,000 Rxs/yr) $4.20/Rx
- Mid-volume pharmacies (15,001-35,000 Rxs/yr).....$4.51/Rx
- Low volume pharmacies (15,000 Rxs/yr and under).....$5.20/Rx
- Unit Dose Systems $5.20/Rx

C. A provider's dispensing fee is determined by the volume of prescriptions the pharmacy fills for medical assistance clients and the general public, as indicated on the annual prescription count survey distributed to pharmacies. The exception to this is the contractor/pharmacy that contracts to provide mail-order delivery service for prescription drugs; the mail-order dispensing fee is determined as a result of the competitive procurement process.

Contracted mail order delivery service for prescription drugs started 2/1/03. The dispensing fee for the contractor/pharmacy is:

- Contracted mail-order delivery service dispensing fee…..3.25/Rx

SUPPLEMENTAL REBATE AGREEMENT

This Supplemental Rebate Agreement ("Agreement") is dated as of this ___day of _____, 200_, by and between the State of Washington Department of Social and Health Services ("State") and (name of provider).

RECITALS

WHEREAS, the State has the authority to enter into agreements with pharmaceutical manufacturers to collect supplemental rebates for the benefit of the State's Medicaid recipients providing such agreements are approved by the Center for Medicare and Medicaid Services (CMS); and

WHEREAS, (name of provider) is willing to provide supplemental rebates to the State based on the actual dispensing of (name of provider) Covered Products under the State's Medicaid program.

NOW THEREFORE, in consideration of the foregoing and of the representations, warranties and covenants set forth below, the parties, intending to be legally bound, agree as follows:

1. **Definitions.** As used herein, the following terms shall have the meanings set forth below:

1.1 **"Agreement"** means this Supplemental Rebate Agreement, including all documents attached or incorporated by reference.

1.2 **"Average Wholesale Price ("AWP")"** shall mean the published price of the Covered Product by National Drug Code ("NDC") as published by First DataBank on the first day of the calendar quarter that corresponds to the calendar quarter for which the State utilization data for the Covered Product is reported to (name of provider).

1.3 **"Basic Rebate"** shall mean, with respect to the Covered Product, the quarterly payment by (name of provider) pursuant to (name of provider's) Medicaid Drug Rebate Agreement made in accordance with Section 1927(c)(1) or Section 1927(c)(3) of the Social Security Act (42 U.S.C. 1396r-8(c)(1) and 42 U.S.C. 1396r-8(3)).

1.4 **"CMS"** shall mean the Center for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration) of the U.S. Department of Health and Human services, or any successor or renamed agency carrying out the functions and duties heretofore carried out by such office.

1.5 **"Competitive Product"** shall mean (specific product(s)), (e.g., "any Proton Pump Inhibitor ("PPI") that competes with Covered Product. PPI's are defined as PRILOSEC® (omeprazole), ACIPHEX ™ (rabeprazole sodium), PROTONIX® Pantoprazole sodium), NEXIUM™ (esomeprazole magnesium), and any other branded PPI approved by the FDA during the term of this Agreeement.")

1.6 **"Covered Product"** shall mean (specific product(s), e.g., "Prevacid (lansoprazole) 15mg and 30mg capsules.")

1.7 **"CPI Rebate"** means, with respect to the Covered Product, the quarterly payment by (name of provider) pursuant to (name of provider's) Medicaid Drug Rebate Agreement, made in accordance with Section 1927(c)(2) of the Social Security Act (42 U.S.C. 1396r-8(c)(1) and 42 U.S.C. 1396r-8(3)).

1.8 **"Ingredient Reimbursement Basis"** shall mean the formula used by State to reimburse Pharmacy providers for branded pharmaceuticals.

1.9 **"Maximum Allowable Cost (MAC)"** shall mean the lowest reimbursement rate established by the State for (specific product).

1.10 "**Medicaid Drug Rebate Agreement"** shall mean the agreement in place between (name of provider) and the Secretary of Health and Human Services, pursuant to Section 4401 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508). CMS is the agency within HHS having the delegated authority to operate the Medicaid program.

1.11 **"Medicaid Recipient"** shall mean any person enrolled in the State Medicaid Program and eligible to receive prescription drug benefits under a fee for service arrangement.

1.12 **"Net Cost"** shall mean the prescription drug ingredient reimbursement calculated as (AWP - 11%) minus the sum of all rebates paid by (name of provider) to the State for the Covered Product for the calendar quarter. In the event of any change to the calculation used by the State to determine drug ingredient reimbursement paid by the State to Pharmacy providers, the applicable terms of this Agreement shall be amended to reflect such change.

1.13 **"Pharmacy"** shall mean a facility licensed to dispense legend drugs, and enrolled as a State Medicaid provider.

1.14 **"Preferred Drug List"** shall mean a document listing various pharmaceutical products covered by the State Medicaid Program for the purpose of guiding the prescribing, dispensing and acquisition of pharmaceutical products.

1.15 **"State Medicaid Program"** shall mean the joint federal and state medical assistance program as established and defined pursuant to Title 42 U.S.C. 1396, et seq., that provides reimbursement for or coverage of prescription drug products to Medicaid Recipients.

1.16 **"State Supplemental Rebate"** shall mean an amount paid on a calendar quarter basis by (name of provider) to State for utilization under State's fee for service Medicaid program pursuant to this Agreement which renders the net cost of Covered Products to be equivalent to the net cost Competitive Products on State Preferred Drug list.

1.17 **"Unit"** means a single capsule of Covered Product.

1.18 **"USC"** means the United States Code. All references to this agreement to USC chapters or sections shall include any successor, amended, or replacement statute.

1.19 **"WAC"** means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation.

2. **State Obligations**

2.1 **Preferred Drug List.** To be eligible for the Supplemental Rebates specified in Attachment B:

a) State shall place and maintain Covered Product on the Preferred Drug List, it being agreed that utilization shall be eligible for the State Supplemental Rebate only in quarters in which Covered Product is listed on the Preferred Drug List; and

b) State shall place Covered Products in an advantaged position relative to non-preferred Competitive Products regarding Preferred Drug List status, and

c) Neither State nor State's fiscal agent will in any way disadvantage Covered Product through usages or restrictions nor equally applied to other PPIs on the Preferred Drug List.

d) State shall have on file the fully executed CMS Exemption Letter, attached hereto as Exhibit C and incorporated by reference.

2.2 **Preferred Drug List Documentation and Publication.** State shall communicate the inclusion of Covered Product on the Preferred Drug List to State Medicaid Program providers through the standard notification process.

2.3 **Invoicing.** State shall invoice (name of provider) for State Supplemental Rebates separately from CMS Rebates using the format set forth by CMS (Reconciliation of State Invoice format). State shall submit the State Supplemental Rebate invoice to (name of provider) within sixty (60) days after the end of each calendar quarter in which the Covered Product subject to such State Supplemental Rebate was paid for by State. Any amended invoice shall be submitted by State within fifteen (15) months after the end of the calendar quarter in which Covered Product was paid for by State.

2.4 **Patient Information.** State, its agents, employees and contractors shall not provide to (name of provider) any patient identifiable information or protected health information ("PHI") or any other information prohibited or regulated by laws or regulations governing confidentiality of medical or other information.

2.5 **Approval of Generic PPI.** If during the duration of this Agreement a generic equivalent of any Competitive Product should become available, State will allow Covered Product to remain on the Preferred Drug List so long as the net cost to the State, as defined in Attachment B, is not more than the lowest reimbursement cost as established by WAC 388-530-1300 for a generic equivalent.

2.6 **Competitive Product fluctuating net cost.** The net cost of (name of provider's) Covered Products to Washington will be less than or equal to the cost of the competitive product for each quarter covered by the terms of this contract.

3. **(Name of Provider) Obligations**

3.1 **State Supplemental Rebate Payment.** (Name of provider) agrees to provide a State Supplemental Rebate for each of its Covered Products that is paid by the State and dispensed to Medicaid Recipients by Pharmacies for each calendar quarter that Covered Products are included in the Preferred Drug List. (Name of provider) shall pay to State the State Supplemental Rebate amount in accordance with the formula set forth in Attachment B. Nothing in this Agreement shall be construed to relieve (name of provider) from its obligation to pay Medicaid Drug Rebates for utilization by State Medicaid Recipients. State shall remit the appropriate share of the State Supplemental Rebate payments made under the Agreement to CMS as required under it s approved state plan.

3.2 **Payment Timeframe.** (Name of provider) shall pay to State the State Supplemental Rebate amount to which State is entitled in accordance with the formula set forth in Attachment B, within thirty-eight (38) days of (name of provider's) receipt of such submission pursuant to Section 2.3.

3.3 **Incomplete Submission.** (Name of provider) shall have no obligation to pay State Supplemental Rebate amounts for claims that are not submitted as part of an invoice in accordance with Section 2.3 of this Agreement. (Name of provider) shall notify State or its designee of any incomplete submission within thirty-eight (38) days of (name of provider's) receipt of such submission pursuant to Section 2.3.

3.4 **Over/Underpayment.** If either party discovers an error in the payment of State Supplemental Rebates, it shall notify the other of such error. The parties shall attempt to reconcile all differences through discussion and negotiation; if that attempt fails, the parties will resolve their dispute in accordance with generally accepted applicable procedures followed by State or CMS in disputes concerning Medicaid Drug Rebates. Any overpayment shall be deducted from subsequent State Supplemental Rebates payable under this Agreement. In the event that no subsequent State Supplemental Rebates are payable, State will refund any such overpayment to (name of provider) within thirty (30) days of the parties' acknowledgement of the overpayment. (Name of provider) will remit any underpayment to State within thirty (30) days of the parties' acknowledgement of such underpayment.

3.5 **Discretion to Market.** Nothing in this Agreement shall be construed to prohibit (name of provider) from discontinuing production, marketing or distribution of any Covered Product or from transferring or licensing any Covered Product to a third party. It is understood that (name of provider) is liable for the payment of State Supplemental Rebates only for Covered Products (as identified by the 11-digit NDC code) distributed (directly or through the wholesale channel) to retail Pharmacies and dispensed to Medicaid Recipients. If (name of provider) elects to discontinue production, marketing or distribution of any Covered Product or to transfer or license any Covered Product to a third party, (name of provider) shall make every reasonable effort to notify State prior to such actions.

4. **Term and Termination**

4.1 **Effective Date.** This Agreement shall be effective as of the date set forth by CMS in the CMS Exemption Letter, attached hereto as Exhibit C, and incorporated by reference, and shall continue in force through June 30, 2004, unless it is terminated sooner pursuant to the following:

a) **Breach.** If either party commits a material breach of this Agreement, the non-breaching party shall deliver written notice mailed by certified mail, return receipt requested, of the alleged breach to the breaching party, with an opportunity for the breaching party to cure the breach during the thirty (30) day period following the delivery. Failure to cure shall give the non-breaching party the right to cancel this Agreement at the end of the thirty (30) day period. The non-breaching party shall give the breaching party final written notice of the cancellation of this Agreement.

b) **Without Cause.** Either party may terminate this Agreement without cause as of the end of any calendar quarter by giving the other party ninety (90) days prior written notice.

4.2 **Accrued Obligations/Remedies.** The expiration or termination of this Agreement shall not affect any rights or obligations of the parties that have accrued prior to the effective date of such termination. The fact that either party exercises any right of termination it may have under this Agreement shall not prevent such party from pursuing any other remedy it may be entitled to in law or equity. Any remedy provided herein shall not be deemed an exclusive remedy unless expressly provided for as such.

4.3 **Execution, Amendment, and Waiver.** This Agreement shall be binding only upon signature by both parties. This Agreement, or any provision, may be altered, amended, or waived by a written amendment executed by both parties.

5 **Miscellaneous**

5.1 **Record Keeping and Audit.** During the term of this Agreement and for a period of three (3) years thereafter, both parties to the Agreement shall use reasonable efforts at all times to ensure that they maintain accurate books, files and records relevant to this Agreement. At (name of provider's) written request, State shall make such information available for inspection by (name of provider) representatives or its designated auditors during regular business hours. Upon written request, each party shall otherwise have the right to inspect, up to once each year, all such relevant books and records of the other party to verify compliance with the terms of this Agreement.

5.2 **Indemnification.** (Name of provider) shall be responsible for and shall indemnify and hold State harmless from all claims resulting from the acts or omissions of (name of provider) and any Subcontractor. State shall be responsible and shall indemnify and hold (name of provider) harmless from all claims resulting from the acts or omissions of State.

5.3 **Confidentiality.** Except as otherwise may be required to be disclosed by law and in accordance with the Rebate Agreement between the Secretary of Health and Human Services and the drug manufacturers, information disclosed by (name of provider) in connection with this Agreement will not be disclosed by the State. Each party shall maintain the confidentiality of all the terms and conditions of this Agreement throughout the term hereof and for a period of three (3) years thereafter.

5.4 **Notices.** Any notice required or permitted to be given by either party to the other shall be given in person or sent by first class mail or express delivery, addressed to the other party at the address set forth below.

(Name of Provider): **State:**
Mailing Address

_____

_____

_____

Attn: _____

5.5 **Force Majeure.** Noncompliance with any obligations hereunder due to force majeure, such as acts of God, laws or regulations of any government, war, civil commotion, destruction of production facilities and materials, fire, earthquake or storm, labor disturbances, shortage of materials, failure of public utilities or common carriers, and any other causes beyond the reasonable control of the parties, shall not constitute breach of contract.

5.6 **Assignment.** Neither party shall have the right to assign this Agreement to a third party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any permitted assignee shall assume all obligations of its assignor under this Agreement. No assignment shall relieve any party of responsibility for the performance of any obligations that have accrued prior to such assignment.

5.7 **No Waiver of Rights.** The failure of either party to insist upon the strict observation or performance of any provision of this Agreement or to exercise any right or remedy shall not impair or waiver any such right or remedy in the future. Every right and remedy given by this Agreement to the parties may be exercised form time to time as often as appropriate.

5.8 **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties. This Agreement (including Attachments) may not be amended or modified except upon the written agreement of both parties.

5.9 **Governing Law.** This Agreement shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be proper only in Thurston County, Washington.

5.10 **Effect of Future Laws.** In the event of the enactment, promulgation, rescission, modification or interpretation of any law or regulation after the date hereof which would (a) materially adversely affect the manner in which either party is obligated to perform under this Agreement, (b) adversely affect for either party the net prices or State Supplemental Rebates or other terms applicable under this Agreement, or (c) have the effect of requiring the net prices or State Supplemental Rebates or other terms applicable under this agreement to be extended or offered to any third party, each party shall have the right to enter into good faith negotiation with the other in order to seek to agree on reasonable terms for maintaining the intent of the Agreement affected by such enactment, promulgation, etc. Agreement on any such terms shall be in the sole discretion of each party. If the parties do not agree within sixty (60) days of a party's written request for negotiations, either party may terminate this Agreement with respect to the affected Covered Products upon expiration of the sixty (60) day period, with immediate effect.

5.11 **Compliance with Law.** In connection with its respective obligations under this Agreement, each party shall comply with all applicable federal, state and local laws and regulations, including without limitation any disclosure or consent requirements.

5.12 **Authority.** State and (name of provider) each represent an warrant to the other that the person signing below has all requisite legal power and authority to execute this Agreement on behalf of each party and each party shall thereby be bound.

5.13 **Best Price Contingency.** The effectiveness of this Agreement shall be contingent on (name of provider's) Best Price and AMP not being affected by State Supplemental Rebates.

5.14 **CMS Approval Contingency.** The effectiveness of this Agreement shall be contingent on receipt of CMS approval by State, as evidenced by the CMS Exemption Letter, attached hereto as Exhibit C and incorporated by reference.

IN WITNESS WHEREOF, this Agreement has been executed by the parties set forth below:

(Name of Provider)	**State of Washington Department of Social and Health Services**
_____	_____
Name	Name
Title: _____	Title: _____
Date: _____	Date: _____

ATTACHMENT A

Covered Products

The products to which this Supplemental Rebate Agreement shall apply are the following:

NDC	Brand	Strength	Package Description

ATTACHMENT B

Rebate Formula

Supplemental Rebate shall be calculated on a calendar quarter basis according to the following formula and will be lower than or equal to the net cost of the Competitive Product:

Supplemental Rebate = ([i]Ingredient Reimbursement) - ([ii]CMS Rebate) - (Net Cost)

First Quarter 2002 net cost for (name of product):
Net Cost for (name/dosage of product) = (price)
Net Cost for (name/dosage of product) = (price)

[I] Ingredient Reimbursement based on the Average Wholesale Price (AWP) as published by First DataBank on the first day of a calendar quarter for the quarter in which the rebate applies;

[II] CMS Rebate as calculated and provided to State by CMS on a calendar quarter for the quarter in which the rebate applies.

ATTACHMENT C

CMS Exemption Letter

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C2-21-15
Baltimore, Maryland 21244-1850

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

Family & Children's Health Group/Centers for Medicaid & State Operations

SEP 16 2002

Mr. Dennis Braddock, Secretary
Department of Social and Health Services
P.O. Box 45010
Olympia, WA 98504-5010

Dear Mr. Braddock:

We have reviewed Washington SPA 02-001 that provides for use of a prior authorization program, Therapeutic Consultation Service (TCS) that includes a Preferred Drug List (PDL), and a supplemental rebate agreement. Based on the information provided, we are pleased to inform you that Washington SPA 02-001 is approved. We have determined that the SPA, prior authorization program, Therapeutic Consultation Service that includes a PDL, and supplemental rebates are consistent with the objectives of the Medicaid program. The prior authorization program, TCS, and supplemental rebates are designed to increase the efficiency and economy of Medicaid operations and benefit the Medicaid population.

A copy of the CMS-179, as well as the pages approved for incorporation into the Washington state plan will be forwarded by the Seattle Regional Office. If you have any questions please contact Kim Howell at (410) 786-6762.

Sincerely,

Larry Reed
Co-Leader
Pharmacy Team

cc: Bunnee Butterfield, ARA, Seattle Regional Office
Randy Poulson, Seattle Regional Office

STATE OF WASHINGTON
SUPPLEMENTAL REBATE AGREEMENT

This Supplemental Rebate Agreement ("Agreement") is dated as of this ___day of _____, 200_, by and between the State of Washington Department of Social and Health Services ("State") and (name of provider).

RECITALS

WHEREAS, the State has the authority to enter into agreements with pharmaceutical manufacturers to collect supplemental rebates in addition to the rebates received under the CMS Rebate Agreement, pursuant to section 1927 of the Social Security Act (42 U.S.C. section 1396(r)(8) for the benefit of Washington's Medicaid recipients, providing such agreements are approved by the Center for Medicare and Medicaid Services (CMS); and

WHEREAS, (name of provider) is willing to provide supplemental rebates to the State based on the actual dispensing of (name of provider) Covered Products under the State's Medicaid program.

NOW THEREFORE, in consideration of the foregoing and of the representations, warranties and covenants set forth below, the parties, intending to be legally bound, agree as follows:

1. **Definitions.** As used herein, the following terms shall have the meanings set forth below:

1.1 **"Agreement"** means this Supplemental Rebate Agreement, including all documents attached or incorporated by reference.

1.2 **"Average Wholesale Price ("AWP")"** shall mean the published price of the Covered Product by National Drug Code ("NDC") as published by First DataBank on the first day of the calendar quarter that corresponds to the calendar quarter for which the State utilization data for the Covered Product is reported to (name of provider).

1.3 **"Basic Rebate"** shall mean, with respect to the Covered Product, the quarterly payment by (name of provider) pursuant to (name of provider's) Medicaid Drug Rebate Agreement made in accordance with Section 1927(c)(1) or Section 1927(c)(3) of the Social Security Act (42 U.S.C. 1396r-8(c)(1) and 42 U.S.C. 1396r-8(3)).

1.4 **"CMS"** shall mean the Center for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration) of the U.S. Department of Health and Human services, or any successor or renamed agency carrying out the functions and duties heretofore carried out by such office.

1.5 **"Competitive Product"** shall mean any (specific drug class) that competes with Covered Product. (e.g., any Proton Pump Inhibitor)

1.6 **"Covered Product"** shall mean (specific product(s) strength(s) dosage form) (e.g., "Prevacid 15mg and 30mg capsules.")

1.7 **"CPI Rebate"** means, with respect to the Covered Product, the quarterly payment by (name of provider) pursuant to (name of provider's) Medicaid Drug Rebate Agreement, made in accordance with Section 1927(c)(2) of the Social Security Act (42 U.S.C. 1396r-8(c)(1) and 42 U.S.C. 1396r-8(3)).

1.8 **"Ingredient Reimbursement Basis"** shall mean the formula used by State to reimburse Pharmacy providers for branded pharmaceuticals.

1.9 **"Maximum Allowable Cost (MAC)"** shall mean the lowest reimbursement rate established by the State for generic (drug class).

1.10 "**Medicaid Drug Rebate Agreement"** shall mean the agreement in place between (name of provider) and the Secretary of Health and Human Services, pursuant to Section 4401 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508). CMS is the agency within HHS having the delegated authority to operate the Medicaid program.

1.11 **"Medicaid Recipient"** shall mean any person enrolled in the State Medicaid Program and eligible to receive prescription drug benefits under a fee for service arrangement.

1.12 **"Net Cost"** shall mean the prescription drug ingredient reimbursement calculated as (AWP - __ %) minus the sum of all rebates paid by (name of provider) to the State for the Covered Product for the calendar quarter. In the event of any change to the calculation used by the State to determine drug ingredient reimbursement paid by the State to Pharmacy providers, the applicable terms of this Agreement shall be amended to reflect such change.

1.13 **"Pharmacy"** shall mean a facility licensed to dispense legend drugs, and enrolled as a State Medicaid provider.

1.14 **"Preferred Drug List"** shall mean a document listing various pharmaceutical products covered by the State Medicaid Program for the purpose of guiding the prescribing, dispensing and acquisition of pharmaceutical products. The Preferred Drug List shall not prevent beneficiaries from obtaining access to medically necessary drugs of manufacturers that participate in the Medicaid Drug Rebate Program.

1.15 **"State Medicaid Program"** shall mean the joint federal and state medical assistance program as established and defined pursuant to Title 42 U.S.C. 1396, et seq., that provides reimbursement for or coverage of prescription drug products to Medicaid Recipients.

1.16 **"State Supplemental Rebate"** shall mean an amount paid on a calendar quarter basis by (name of provider) to State for utilization under State's fee for service Medicaid program pursuant to this Agreement which renders at the option of the State, either (a) a net cost of Covered Products that is less than or equal to the cost of the competitive product for each quarter covered by the terms of this contract; or (b) a net cost that is comparatively low or that is the lowest net cost to an equivalent therapeutic dose of Covered Product to become a preferred drug in the drug class.

1.17 **"Unit"** means a single CMS unit of Covered Product.

1.18 **"USC"** means the United States Code. All references to this agreement to USC chapters or sections shall include any successor, amended, or replacement statute.

1.19 **"WAC"** means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation.

2. **State Obligations**

2.1 **Preferred Drug List.** To be eligible for the Supplemental Rebates specified in Attachment B:

a) State shall place and maintain Covered Product on the Preferred Drug List, it being agreed that utilization shall be eligible for the State Supplemental Rebate only in quarters in which Covered Product is listed on the Preferred Drug List; and

b)State shall place Covered Products in an advantaged position relative to non-preferred Competitive Products regarding Preferred Drug List status, unless otherwise mutually agreed upon in writing by the State and (name of provider); and

c)Neither State nor State's fiscal agent will in any way disadvantage Covered Product through usages or restrictions not equally applied to other (drug class) on the Preferred Drug List, unless otherwise mutually agreed upon in writing by the State and (name of provider); and

d)State shall have on file the fully executed CMS Approval Letter, attached hereto as Exhibit C and incorporated by reference.

2.2 **Preferred Drug List Documentation and Publication.** State shall communicate the inclusion of Covered Product on the Preferred Drug List to State Medicaid Program providers through the standard notification process.

2.3 **Invoicing.** State shall invoice (name of provider) for State Supplemental Rebates separately from CMS Rebates using the format set forth by CMS (Reconciliation of State Invoice format). State shall submit the State Supplemental Rebate invoice to (name of provider) within sixty (60) days after the end of each calendar quarter in which the Covered Product subject to such State Supplemental Rebate was paid for by State. Any amended invoice shall be submitted by State within fifteen (15) months after the end of the calendar quarter in which Covered Product was paid for by State.

2.4 **Patient Information.** State, its agents, employees and contractors shall not provide to (name of provider) any patient identifiable information or protected health information ("PHI") or any other information prohibited or regulated by laws or regulations governing confidentiality of medical or other information.

2.5 **Approval of Generic.** If during the duration of this Agreement a generic equivalent of any Competitive Product should become available, State will allow Covered Product to remain on the Preferred Drug List so long as the net cost to the State, as defined in Attachment B, is not more than the lowest reimbursement cost as established by WAC 388-530-1300 for a generic equivalent.

2.6 **Competitive Product fluctuating net cost.** At the option of the State, the net cost of (name of provider's) Covered Products to Washington will be either (a) a net cost that is less than or equal to the cost of the competitive product for each quarter covered by the terms of this contract; or (b) a net cost that is comparatively low or that is the lowest net cost for an equivalent therapeutic dose of Covered Product to become a preferred drug in the drug class.

3. **(Name of Provider) Obligations**

3.1 **State Supplemental Rebate Payment.** (Name of provider) agrees to provide a State Supplemental Rebate for each of its Covered Products that is paid by the State and dispensed to Medicaid Recipients by Pharmacies for each calendar quarter that Covered Products are included in the Preferred Drug List. (Name of provider) shall pay to State the State Supplemental Rebate amount in accordance with the formula set forth in Attachment B. Nothing in this Agreement shall be construed to relieve (name of provider) from its obligation to pay Medicaid Drug Rebates for utilization by State Medicaid Recipients. State shall remit the appropriate share of the State Supplemental Rebate payments made under the Agreement to CMS as required under it s approved state plan.

3.2 **Payment Timeframe.** (Name of provider) shall pay to State the State Supplemental Rebate amount to which State is entitled in accordance with the formula set forth in Attachment B, within thirty-eight (38) days after receipt of State's invoice.

3.3 **Incomplete Submission.** (Name of provider) shall have no obligation to pay State Supplemental Rebate amounts for claims that are not submitted as part of an invoice in accordance with Section 2.3 of this Agreement. (Name of provider) shall notify State or its designee of any incomplete submission within thirty-eight (38) days of (name of provider's) receipt of such submission pursuant to Section 2.3.

3.4 **Over/Underpayment.** If either party discovers an error in the payment of State Supplemental Rebates, it shall notify the other of such error. The parties shall attempt to reconcile all differences through discussion and negotiation; if that attempt fails, the parties will resolve their dispute in accordance with generally accepted applicable procedures followed by State or CMS in disputes concerning Medicaid Drug Rebates. Any overpayment shall be deducted from subsequent State Supplemental Rebates payable under this Agreement. In the event that no subsequent State Supplemental Rebates are payable, State will refund any such overpayment to (name of provider) within thirty (30) days of the parties' acknowledgement of the overpayment. (Name of provider) will remit any underpayment to State within thirty (30) days of the parties' acknowledgement of such underpayment.

3.5 **Discretion to Market.** Nothing in this Agreement shall be construed to prohibit (name of provider) from discontinuing production, marketing or distribution of any Covered Product or from transferring or licensing any Covered Product to a third party. It is understood that (name of provider) is liable for the payment of State Supplemental Rebates only for Covered Products (as identified by the 11-digit NDC code) distributed (directly or through the wholesale channel) to retail Pharmacies and dispensed to Medicaid Recipients. If (name of provider) elects to discontinue production, marketing or distribution of any Covered Product or to transfer or license any Covered Product to a third party, (name of provider) shall make every reasonable effort to notify State prior to such actions.

4. **Term and Termination**

4.1 **Effective Date.** This Agreement shall be effective as of (Month, day, year) and shall continue in force through (Month, day, year), unless it is terminated sooner pursuant to the following:

a) **Breach.** If either party commits a material breach of this Agreement, the non-breaching party shall deliver written notice mailed by certified mail, return receipt requested, of the alleged breach to the breaching party, with an opportunity for the breaching party to cure the breach during the thirty (30) day period following delivery. Failure to cure shall give the non-breaching party the right to cancel this Agreement at the end of the thirty (30) day period. The non-breaching party shall give the breaching party final written notice of the cancellation of this Agreement.

b) **Without Cause.** Either party may terminate this Agreement without cause as of the end of any calendar quarter by giving the other party ninety (90) days prior written notice.

4.2 **Accrued Obligations/Remedies.** The expiration or termination of this Agreement shall not affect any rights or obligations of the parties that have accrued prior to the effective date of such termination. The fact that either party exercises any right of termination it may have under this Agreement shall not prevent such party from pursuing any other remedy it may be entitled to in law or equity. Any remedy provided herein shall not be deemed an exclusive remedy unless expressly provided for as such.

4.3 **Execution, Amendment, and Waiver.** This Agreement shall be binding only upon signature by both parties. This Agreement, or any provision, may be altered, amended, or waived by a written amendment executed by both parties. Any alterations or amendments to the Agreement must be authorized by CMS.

5 **Miscellaneous**

5.1 **Record Keeping and Audit.** During the term of this Agreement and for a period of three (3) years thereafter, both parties to the Agreement shall use reasonable efforts at all times to ensure that they maintain accurate books, files and records relevant to this Agreement. At (name of provider's) written request, State shall make such information available for inspection by (name of provider) representatives or its designated auditors during regular business hours. Upon written request, each party shall otherwise have the right to inspect, up to once each year, all such relevant books and records of the other party to verify compliance with the terms of this Agreement.

5.2 **Indemnification.** (Name of provider) shall be responsible for and shall indemnify and hold State harmless from all claims resulting from the acts or omissions of (name of provider) and any Subcontractor. State shall be responsible and shall indemnify and hold (name of provider) harmless from all claims resulting from the acts or omissions of State.

5.3 **Confidentiality.** Except as otherwise may be required to be disclosed by law and in accordance with the Rebate Agreement between the Secretary of Health and Human Services and the drug manufacturers, information disclosed by (name of provider) in connection with this Agreement will not be disclosed by the State. Each party shall maintain the confidentiality of all the terms and conditions of this Agreement throughout the term hereof and for a period of three (3) years thereafter.

5.4 **Notices.** Any notice required or permitted to be given by either party to the other shall be given in person or sent by first class mail or express delivery, addressed to the other party at the address set forth below.

(Name of Provider): **State:**
Mailing Address

_____

_____

_____

Attn: _____

5.5 **Force Majeure.** Noncompliance with any obligations hereunder due to force majeure, such as acts of God, laws or regulations of any government, war, civil commotion, destruction of production facilities and materials, fire, earthquake or storm, labor disturbances, shortage of materials, failure of public utilities or common carriers, and any other causes beyond the reasonable control of the parties, shall not constitute breach of contract.

5.6 **Assignment.** Neither party shall have the right to assign this Agreement to a third party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any permitted assignee shall assume all obligations of its assignor under this Agreement. No assignment shall relieve any party of responsibility for the performance of any obligations that have accrued prior to such assignment.

5.7 **No Waiver of Rights.** The failure of either party to insist upon the strict observation or performance of any provision of this Agreement or to exercise any right or remedy shall not impair or waive any such right or remedy in the future. Every right and remedy given by this Agreement to the parties may be exercised from time to time as often as appropriate.

5.8 **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties as authorized by CMS. This Agreement (including Attachments) may not be amended or modified except upon the written agreement of both parties.

5.9 **Governing Law.** This Agreement shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be proper only in Thurston County, Washington.

5.10 **Effect of Future Laws.** In the event of the enactment, promulgation, rescission, modification or interpretation of any law or regulation after the date hereof which would (a) materially adversely affect the manner in which either party is obligated to perform under this Agreement, (b) adversely affect for either party the net prices or State Supplemental Rebates or other terms applicable under this Agreement, or (c) have the effect of requiring the net prices or State Supplemental Rebates or other terms applicable under this Agreement to be extended or offered to any third party, each party shall have the right to enter into good faith negotiation with the other in order to seek to agree on reasonable terms for maintaining the intent of the Agreement affected by such enactment, promulgation, etc. Agreement on any such terms shall be in the sole discretion of each party. If the parties do not agree within sixty (60) days of a party's written request for negotiations, either party may terminate this Agreement with respect to the affected Covered Products upon expiration of the sixty (60) day period, with immediate effect.

5.11 **Compliance with Law.** In connection with its respective obligations under this Agreement, each party shall comply with all applicable federal, state and local laws and regulations, including without limitation any disclosure or consent requirements.

5.12 **Authority.** State and (name of provider) each represent and warrant to the other that the person signing below has all requisite legal power and authority to execute this Agreement on behalf of each party and each party shall thereby be bound.

5.13 **Best Price Contingency.** The effectiveness of this Agreement shall be contingent on (name of provider's) Best Price and AMP not being affected by State Supplemental Rebates.

5.14 **CMS Approval Contingency.** The effectiveness of this Agreement shall be contingent on receipt of CMS approval by State, as evidenced by the CMS Approval Letter, attached hereto as Exhibit C and incorporated by reference.

IN WITNESS WHEREOF, this Agreement has been executed by the parties set forth below:

(Name of Provider)	**State of Washington Department of Social and Health Services**
_____	_____
Name	Name
Title: _____	Title: _____
Date: _____	Date: _____

ATTACHMENT A

Covered Products

The products to which this Supplemental Rebate Agreement shall apply are the following:

NDC	Brand	Strength	Package Description

ATTACHMENT B

New offer is for net cost for exclusive preferred drug_____

New offer is for net cost for one of two preferred drugs_____

New offer is for net cost for one of three preferred drugs_____

New offer is for net cost for reference pricing_____

Rebate Formula

Supplemental Rebate shall be calculated on a calendar quarter basis according to the following formula and will be lower than or equal to the net cost of the Competitive Product for reference pricing:

Supplemental Rebate = ([I]Ingredient Reimbursement) - ([II]CMS Rebate) - (Net Cost)

(_____QuarterYear) net cost for (name of product):
Net Cost for (name/dosage of product) = (price)
Net Cost for (name/dosage of product) = (price)

[I] Ingredient Reimbursement based on the Average Wholesale Price (AWP) as published by First DataBank on the first day of the quarter in which the rebate applies.

[II] CMS Rebate as calculated and provided to State by CMS on a calendar quarter for the quarter in which the rebate applies.

ATTACHMENT C

CMS Approval Letter

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-01-16
Baltimore, Maryland 21244-1850

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

Center for Medicaid and State Operation

JAN 22 2004

Mr. Dennis Braddock
Department of Social and Health Services
Medical Assistance Administration
925 Plum St SE, MS: 45533
Olympia, Washington 98504-5533

Dear Mr. Braddock:

We have reviewed Washington's State Plan Amendment (SPA) 03-024 that provides for the use of a Medicaid supplemental rebate agreement (SRA) and preferred drug list (PDL). We have determined that the SPA, PDL and SRA are consistent with the objectives of the Medicaid program. Both the PDL and SRA are designed to increase the efficiency and economy of Medicaid operations and benefit the Medicaid population. Based on the information provided, we are pleased to inform you that Washington SPA 03-024 is approved, effective October 1, 2003.

Approval of SPA 03-024 extends only to the SRA that was submitted to CMS on January 16, 2004, which is specifically referenced in the SPA. If changes are subsequently made to the drug rebate agreement, a new SPA and the revised agreement needs to be submitted to CMS for review and approval.

A copy of the CMS-179 form, as well as the pages approved for incorporation into the Washington state plan, will be forwarded by the Seattle Regional Office. If you have any questions regarding this amendment, please contact Claire Hardwick at (410) 786-6777.

Sincerely,

Larry Reed
Co-Leader
Pharmacy Team

cc: Karen O'Connor, ARA, Seattle Regional Office
Maria Garza, Seattle Regional Office

STATE OF WASHINGTON
SUPPLEMENTAL REBATE AGREEMENT

This Supplemental Rebate Agreement ("Agreement") is dated as of this ___day of _____, 200_, by and between the State of Washington Department of Social and Health Services ("State") and _____ ("Provider").

RECITALS

WHEREAS, the State has the authority to enter into agreements with pharmaceutical manufacturers to collect supplemental rebates for the benefit of the State's Medicaid recipients providing such agreements are approved by the Center for Medicare and Medicaid Services (CMS); and

WHEREAS, the Provider is willing to provide supplemental rebates to the State based on the actual dispensing of the Provider's Covered Products under the State's Medicaid program.

NOW THEREFORE, in consideration of the foregoing and of the representations, warranties and covenants set forth below, the parties, intending to be legally bound, agree as follows:

1. **Definitions.** As used herein, the following terms shall have the meanings set forth below:

1.1 **Agreement** means this Supplemental Rebate Agreement, including all documents attached or incorporated by reference.

1.2 **Average Manufacturer Price (AMP)** shall mean, with respect to a covered outpatient drug of a manufacturer for a rebate period, the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade class of trade, after deducting customary prompt pay discounts.

1.3 **Average Wholesale Price ("AWP")** shall mean the published price of the Covered Product by National Drug Code ("NDC") as published by First DataBank on the first day of the calendar quarter that corresponds to the calendar quarter for which the State utilization data for the Covered Product is reported to the Provider.

1.4 **Basic Rebate** shall mean, with respect to the Covered Product, the quarterly payment by the Provider pursuant to the Provider's Medicaid Drug Rebate Agreement made in accordance with Section 1927(c)(1) or Section 1927(c)(3) of the Social Security Act (42 U.S.C. 1396r-8(c)(1) and 42 U.S.C. 1396r-8(3)).

1.5 **Best Price** shall mean the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity with exception of those exceptions stated at Section 1927(c)(1).

1.6 **CMS** shall mean the Center for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration) of the U.S. Department of Health and Human services, or any successor or renamed agency carrying out the functions and duties heretofore carried out by such office.

1.7 **Competitive Product** shall mean a pharmaceutical product that is therapeutically interchangeable to one or more Covered Products of Provider.

1.8 **Covered Product** shall mean a pharmaceutical product identified in Attachment A of this agreement

1.9 **CPI Rebate** means, with respect to the Covered Product, the quarterly payment by the Provider pursuant to the Provider's Medicaid Drug Rebate Agreement, made in accordance with Section 1927(c)(2) of the Social Security Act (42 U.S.C. 1396r-8(c) and 42 U.S.C. 1396r-8(3)).

1.10 **Ingredient Reimbursement Basis** shall mean the formula used by State to reimburse Pharmacy providers for branded pharmaceuticals.

1.9 **Maximum Allowable Cost (MAC)** shall mean the lowest reimbursement rate established by the State for any drug in the same class as Covered Product.

1.10 **Medicaid Drug Rebate Agreement** shall mean the agreement in place between the Provider and the Secretary of Health and Human Services, pursuant to Section 4401 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508). CMS is the agency within HHS having the delegated authority to operate the Medicaid program.

1.11 **Medicaid Recipient** shall mean any person enrolled in the State Medicaid Program and eligible to receive prescription drug benefits under a fee for service arrangement.

1.12 **Net Cost** shall mean the prescription drug ingredient reimbursement calculated as (AWP - __ %) minus the sum of all rebates paid by the Provider to the State for the Covered Product for the calendar quarter. In the event of any change to the calculation used by the State to determine drug ingredient reimbursement paid by the State to Pharmacy providers, the applicable terms of this Agreement shall be amended to reflect such change.

1.13 **Pharmacy** shall mean a facility licensed to dispense legend drugs, and enrolled as a State Medicaid provider.

1.14 **Preferred Drug List** shall mean a document listing various pharmaceutical products covered by the State Medicaid Program for the purpose of guiding the prescribing, dispensing and acquisition of pharmaceutical products. The Preferred Drug List shall not prevent beneficiaries from obtaining access to medically necessary drugs of manufacturers that participate in the Medicaid Drug Rebate Program.

1.15 **State Medicaid Program** shall mean the joint federal and state medical assistance program as established and defined pursuant to Title 42 U.S.C. 1396, et seq., that provides reimbursement for or coverage of prescription drug products to Medicaid Recipients.

1.16 **State Supplemental Rebate** shall mean an amount paid on a calendar quarter basis by the Provider to the State for utilization under State's fee for service Medicaid program pursuant to Rebate Formula in Attachment B of this Agreement.

1.17 **Unit** means drug unit in the lowest identifiable amount (e.g., tablet or capsule or solid dosage forms, milliliter for liquid forms, grams for ointment or creams)..

1.18 **USC** means the United States Code. All references to this agreement to USC chapters or sections shall include any successor, amended, or replacement statute.

1.19 **WAC** means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation.

2. **State Obligations**

2.1 **Preferred Drug List.** To be eligible for the Supplemental Rebates specified in Attachment B:

a) State shall place and maintain Covered Product on the Preferred Drug List, it being agreed that utilization shall be eligible for the State Supplemental Rebate only in quarters in which Covered Product is listed on the Preferred Drug List; and

b) State shall place Covered Products in an advantaged position relative to non-preferred Competitive Products regarding Preferred Drug List status, unless otherwise mutually agreed upon in writing by the State and Provider; and

c)Neither State nor State's fiscal agent will in any way disadvantage Covered Product through usages or restrictions not equally applied to other drugs in the same drug class as the Covered Product that are on the Preferred Drug List, unless otherwise mutually agreed upon in writing by the State and Provider; and

d) State shall have on file the fully executed CMS Approval Letter, attached hereto as Exhibit C and incorporated by reference.

2.2 **Preferred Drug List Documentation and Publication.** State shall communicate the inclusion of Covered Product on the Preferred Drug List to State Medicaid Program providers through the standard notification process.

2.3 **Invoicing.** State shall invoice Provider for State Supplemental Rebates separately from CMS Rebates using the format set forth by CMS (Reconciliation of State Invoice format). State shall submit the State Supplemental Rebate invoice to the Provider within sixty (60) days after the end of each calendar quarter in which the Covered Product subject to such State Supplemental Rebate was paid for by State. Any amended invoice shall be submitted by State within fifteen (15) months after the end of the calendar quarter in which Covered Product was paid for by State.

2.4 **Patient Information.** State, its agents, employees and contractors shall not provide to the Provider any patient identifiable information or protected health information ("PHI") or any other information prohibited or regulated by laws or regulations governing confidentiality of medical or other information.

2.5 **Approval of Generic.** If during the duration of this Agreement a generic equivalent of any Competitive Product should become available, State will allow Covered Product to remain on the Preferred Drug List so long as the net cost to the State, as defined in Attachment B,

is not more than the lowest reimbursement cost as established by WAC 388-530-1300 for a generic equivalent.

3. **Provider Obligations**

3.1 **State Supplemental Rebate Payment.** Provider agrees to provide a State Supplemental Rebate for each of its Covered Products that is paid by the State and dispensed to Medicaid Recipients by Pharmacies for each calendar quarter that Covered Products are included in the Preferred Drug List. Provider shall pay to State the State Supplemental Rebate amount in accordance with the formula set forth in Attachment B. State shall remit the appropriate share of the State Supplemental Rebate payments made under the Agreement to CMS as required under it s approved state plan. Nothing in this Agreement shall be construed to relieve Provider from its obligation to pay Basic Rebates to State pursuant to the Medicaid Drug Rebate Agreement.

3.2 **Payment Timeframe.** Provider shall pay to State the State Supplemental Rebate amount to which State is entitled in accordance with the formula set forth in Attachment B, within thirty-eight (38) days after receipt of State's Supplemental Rebate invoice pursuant to Section 2.3.

3.3 **Incomplete Submission.** Provider shall have no obligation to pay State Supplemental Rebate amounts for claims that are not submitted as part of an invoice in accordance with Section 2.3 of this Agreement. Provider shall notify State or its designee of any incomplete submission within thirty-eight (38) days of Porivder's receipt of such submission pursuant to Section 2.3.

3.4 **Over/Underpayment.** If either party discovers an error in the payment of State Supplemental Rebates, it shall notify the other of such error. The parties shall attempt to reconcile all differences through discussion and negotiation; if that attempt fails, the parties will resolve their dispute in accordance with generally accepted applicable procedures followed by State or CMS in disputes concerning Medicaid Drug Rebates. Any overpayment shall be deducted from subsequent State Supplemental Rebates payable under this Agreement. In the event that no subsequent State Supplemental Rebates are payable, State will refund any such overpayment to Provider within thirty (30) days of the parties' acknowledgement of the overpayment. Provider will remit any underpayment to State within thirty (30) days of the parties' acknowledgement of such underpayment.

3.5 **Discretion to Market.** Nothing in this Agreement shall be construed to prohibit Provider from discontinuing production, marketing or distribution of any Covered Product or from transferring or licensing any Covered Product to a third party. It is understood that Provider is liable for the payment of State Supplemental Rebates only for Covered Products (as identified by the 11-digit NDC code) distributed (directly or through the wholesale channel) to retail Pharmacies and dispensed to Medicaid Recipients. If Provider elects to discontinue production, marketing or distribution of any Covered Product or to transfer or license any Covered Product to a third party, Provider shall make every reasonable effort to notify State prior to such actions.

4. **Term and Termination**

4.1 **Effective Date.** This Agreement shall be effective as of (Month, day, year) and shall continue in force through (Month, day, year), unless it is terminated sooner pursuant to the following:

a) **Breach.** If either party commits a material breach of this Agreement, the non-breaching party shall deliver written notice mailed by certified mail, return receipt requested, of the alleged breach to the breaching party, with an opportunity for the breaching party to cure the breach during the thirty (30) day period following delivery. Failure to cure shall give the non-breaching party the right to cancel this Agreement at the end of the thirty (30) day period. The non-breaching party shall give the breaching party final written notice of the cancellation of this Agreement.

b) **Without Cause.** Either party may terminate this Agreement without cause as of the end of any calendar quarter by giving the other party ninety (90) days prior written notice.

4.2 **Accrued Obligations/Remedies.** The expiration or termination of this Agreement shall not affect any rights or obligations of the parties that have accrued prior to the effective date of such termination. The fact that either party exercises any right of termination it may have under this Agreement shall not prevent such party from pursuing any other remedy it may be entitled to in law or equity. Any remedy provided herein shall not be deemed an exclusive remedy unless expressly provided for as such.

4.3 **Execution, Amendment, and Waiver.** This Agreement shall be binding only upon signature by both parties. This Agreement, or any provision, may be altered, amended, or waived by a written amendment executed by both parties. Any alterations or amendments to the Agreement must be authorized by CMS.

5 **Miscellaneous**

5.1 **Record Keeping and Audit.** During the term of this Agreement and for a period of three (3) years thereafter, both parties to the Agreement shall use reasonable efforts at all times to ensure that they maintain accurate books, files and records relevant to this Agreement. At Provider's written request, State shall make such information available for inspection by Provider representatives or its designated auditors during regular business hours. Upon written request, each party shall otherwise have the right to inspect, up to once each year, all such relevant books and records of the other party to verify compliance with the terms of this Agreement.

5.2 **Indemnification.** Provider shall be responsible for and shall indemnify and hold State harmless from all claims caused by or arising out of Provider's or any subcontractor's negligent or otherwise wrongful performance, act or omission under the Agreement. State shall be responsible and shall indemnify and hold Provider harmless from all claims caused by or arising out of the State's negligent or otherwise wrongful performance, act, or omission of any term of the Agreement.

5.3 **Confidentiality.** Except as otherwise may be required to be disclosed by law and in accordance with the Medicaid Drug Rebate Agreement between the Secretary of U.S. Department of Health and Human Services and the drug manufacturers, information disclosed by provider in connection with this Agreement will not be disclosed by the State. Each party shall maintain the confidentiality of all the terms and conditions of this Agreement throughout the term hereof and for a period of three (3) years thereafter.

5.4 **Notices.** Any notice required or permitted to be given by either party to the other shall be given in person or sent by first class mail or express delivery, addressed to the other party at the address set forth below.

State Mailing Address:	**Provider Mailing Address**
_____	_____
_____	_____
_____	_____
Attn: _____	_____

5.5 **Force Majeure.** Noncompliance with any obligations hereunder due to force majeure, such as acts of God, laws or regulations of any government, war, civil commotion, destruction of production facilities and materials, fire, earthquake or storm, labor disturbances, shortage of materials, failure of public utilities or common carriers, and any other causes beyond the reasonable control of the parties, shall not constitute breach of contract.

5.6 **Assignment.** Neither party shall have the right to assign this Agreement to a third party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any permitted assignee shall assume all obligations of its assignor under this Agreement. No assignment shall relieve any party of responsibility for the performance of any obligations that have accrued prior to such assignment.

5.7 **No Waiver of Rights.** The failure of either party to insist upon the strict observation or performance of any provision of this Agreement or to exercise any right or remedy shall not impair or waive any such right or remedy in the future. Every right and remedy given by this Agreement to the parties may be exercised from time to time as often as appropriate.

5.8 **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties as authorized by CMS. This Agreement (including Attachments) may not be amended or modified except upon the written agreement of both parties as authorized by CMS.

5.9 **Governing Law.** This Agreement shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be proper only in Thurston County, Washington.

5.10 **Effect of Future Laws.** In the event of the enactment, promulgation, rescission, modification or interpretation of any law or regulation after the date hereof which would

(a) materially adversely affect the manner in which either party is obligated to perform under this Agreement,

(b) adversely affect for either party the net prices or State Supplemental Rebates or other terms applicable under this Agreement, or

(c) have the effect of requiring the net prices or State Supplemental Rebates or other terms applicable under this Agreement to be extended or offered to any third party.

Each party shall have the right to enter into good faith negotiation with the other in order to seek to agree on reasonable terms for maintaining the intent of the Agreement affected by such enactment, promulgation, etc. Agreement on any such terms shall be in the sole discretion of each party. If the parties do not agree within sixty (30) days of a party's written request for negotiations, either party may terminate this Agreement with respect to the affected Covered Products upon expiration of the sixty (30) day period, with immediate effect.

5.11 **Compliance with Law.** In connection with its respective obligations under this Agreement, each party shall comply with all applicable federal, state and local laws and regulations, including without limitation any disclosure or consent requirements.

5.12 **Authority.** State and Provider each represent and warrant to the other that the person signing below has all requisite legal power and authority to execute this Agreement on behalf of each party and each party shall thereby be bound.

5.13 **Best Price Contingency.** The effectiveness of this Agreement shall be contingent on Provider's Best Price and AMP not being affected by State Supplemental Rebates.

5.14 **CMS Approval Contingency.** The effectiveness of this Agreement shall be contingent on receipt by State of CMS approval of the form of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties set forth below:

State of Washington **Department of Social and Health Services**	_____ ("Provider")
_____ Name	_____ Name
Title: _____	Title: _____
Date: _____	Date: _____

ATTACHMENT A

Covered Products

The products to which this Supplemental Rebate Agreement shall apply are the following:

NDC	Brand	Strength	Package Description

ATTACHMENT B

New offer is for net cost for exclusive preferred drug_____

New offer is for net cost for one of two preferred drugs_____

New offer is for net cost for one of three preferred drugs_____

Rebate Formula

Supplemental Rebate shall be calculated on a calendar quarter basis according to the following formula:

Supplemental Rebate =([i]Ingredient Reimbursement) ([ii]CMS Rebate) - (Net Cost)

(QuarterYear) net cost for (name of product):
Net Cost for (name/dosage of product) = (price)
Net Cost for (name/dosage of product) = (price)

For the term of this Agreement, Net Cost for Covered Product shall be fixed at the following:

Covered Product (drug name)	Dosage/Package	Unit Type	NDC-9 OR NDC-11	Net Cost Per Unit

i Ingredient Reimbursement based on the Average Wholesale Price (AWP) as published by First DataBank on the first day of a calendar quarter for the quarter in which the rebate applies;

ii CMS Rebate as calculated and provided to State by CMS on a calendar quarter for the quarter in which the rebate applies.

ATTACHMENT C

CMS Approval Letter

Email

From: Maria Garza [MGarza@cms.hhs.gov]
Sent: Thursday, January 27, 2005 4:35 PM
Cc: Kimberly Howell; MYERSEA@dshs.wa.gov
Subject: Re: Fwd: FW: Proposed Merck Amendment to Approved Supplemental Drug RebateAgreement

Attachments: Merck Rebate Agrmt 11-04.doc

Dr. Thompson:

CMS has completed our review of the proposed Merck amendments to Washington's approved supplemental rebate agreement. Based upon our review the proposed amendments are not substantive, as revised and continue to be consistent with the respective standards established by CMS in the September 18, 2002, State Medicaid Directors Letter.
Consequently, the submission of a State Plan Amendment is not required.
However, any subsequent changes to this agreement must be submitted to CMS for review.

Thank you to you and your staff for your patience on this matter. We continue to work to move forward the decision on the Pfizer agreement.

Maria Garza & Kim Howell

STATE OF WASHINGTON
SUPPLEMENTAL REBATE AGREEMENT

This Supplemental Rebate Agreement ("Agreement") is dated as of this ___day of _____, 200_, by and between the State of Washington Department of Social and Health Services ("State") and (name of provider).

RECITALS

WHEREAS, the State has the authority to enter into agreements with pharmaceutical manufacturers to collect supplemental rebates in addition to the rebates received under the CMS Rebate Agreement, pursuant to section 1927 of the Social Security Act (42 U.S.C. section 1396(r)(8) for the benefit of Washington's Medicaid recipients, providing such agreements are approved by the Center for Medicare and Medicaid Services (CMS); and

WHEREAS, (name of provider) is willing to provide supplemental rebates to the State based on the actual dispensing of (name of provider) Covered Products under the State's Medicaid program.

NOW THEREFORE, in consideration of the foregoing and of the representations, warranties and covenants set forth below, the parties, intending to be legally bound, agree as follows:

1. **Definitions.** As used herein, the following terms shall have the meanings set forth below:

1.1 **"Agreement"** means this Supplemental Rebate Agreement, including all documents attached or incorporated by reference.

1.2 **"Average Wholesale Price ("AWP")"** shall mean the published price of the Covered Product by National Drug Code ("NDC") as published by First DataBank on the first day of the calendar quarter that corresponds to the calendar quarter for which the State utilization data for the Covered Product is reported to (name of provider).

1.3 **"Basic Rebate"** shall mean, with respect to the Covered Product, the quarterly payment by (name of provider) pursuant to (name of provider's) Medicaid Drug Rebate Agreement made in accordance with Section 1927(c)(1) or Section 1927(c)(3) of the Social Security Act (42 U.S.C. 1396r-8(c)(1) and 42 U.S.C. 1396r-8(3)).

1.4 **"CMS"** shall mean the Center for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration) of the U.S. Department of Health and Human services, or any successor or renamed agency carrying out the functions and duties heretofore carried out by such office.

1.5 **"Competitive Product"** shall mean any (specific drug class) that competes with Covered Product. (e.g., any Proton Pump Inhibitor)

1.6 **"Covered Product"** shall mean (specific product(s) strength(s) dosage form) (e.g., "Prevacid 15mg and 30mg capsules.")

1.7 **"CPI Rebate"** means, with respect to the Covered Product, the quarterly payment by (name of provider) pursuant to (name of provider's) Medicaid Drug Rebate Agreement, made in accordance with Section 1927(c)(2) of the Social Security Act (42 U.S.C. 1396r-8(c)(1) and 42 U.S.C. 1396r-8(3)).

1.8 **"Ingredient Reimbursement Basis"** shall mean the formula used by State to reimburse Pharmacy providers for branded pharmaceuticals.

1.9 **"Maximum Allowable Cost (MAC)"** shall mean the lowest reimbursement rate established by the State for generic (drug class).

1.10 "**Medicaid Drug Rebate Agreement"** shall mean the agreement in place between (name of provider) and the Secretary of Health and Human Services, pursuant to Section 4401 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508). CMS is the agency within HHS having the delegated authority to operate the Medicaid program.

1.11 **"Medicaid Recipient"** shall mean any person enrolled in the State Medicaid Program and eligible to receive prescription drug benefits under a fee for service arrangement.

1.12 **"Net Cost"** shall mean the prescription drug ingredient reimbursement calculated as (AWP - __ %) minus the sum of all rebates paid by (name of provider) to the State for the Covered Product for the calendar quarter. In the event of any change to the calculation used by the State to determine drug ingredient reimbursement paid by the State to Pharmacy providers, the applicable terms of this Agreement shall be amended to reflect such change.

1.13 **"Pharmacy"** shall mean a facility licensed to dispense legend drugs, and enrolled as a State Medicaid provider.

1.14 **"Preferred Drug List"** shall mean a document listing various pharmaceutical products covered by the State Medicaid Program for the purpose of guiding the prescribing, dispensing and acquisition of pharmaceutical products. The Preferred Drug List shall not prevent beneficiaries from obtaining access to medically necessary drugs of manufacturers that participate in the Medicaid Drug Rebate Program.

1.15 **"State Medicaid Program"** shall mean the joint federal and state medical assistance program as established and defined pursuant to Title 42 U.S.C. 1396, et seq., that provides reimbursement for or coverage of prescription drug products to Medicaid Recipients.

1.16 **"State Supplemental Rebate"** shall mean an amount paid on a calendar quarter basis by (name of provider) to State for utilization under State's fee for service Medicaid program pursuant to this Agreement which renders at the option of the State, either (a) a net cost of Covered Products that is less than or equal to the cost of the competitive product for each quarter covered by the terms of this contract; or (b) a net cost that is comparatively low or that is the lowest net cost to an equivalent therapeutic dose of Covered Product to become a preferred drug in the drug class.

1.17 **"Unit"** means a single CMS unit of Covered Product.

1.18 **"USC"** means the United States Code. All references to this agreement to USC chapters or sections shall include any successor, amended, or replacement statute.

1.19 **"WAC"** means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation.

2. **State Obligations**

2.1 **Preferred Drug List.** To be eligible for the Supplemental Rebates specified in Attachment B:

a) State shall place and maintain Covered Product on the Preferred Drug List, it being agreed that utilization shall be eligible for the State Supplemental Rebate only in quarters in which Covered Product is listed on the Preferred Drug List; and

b) State shall place Covered Products in an advantaged position relative to non-preferred Competitive Products regarding Preferred Drug List status, unless otherwise mutually agreed upon in writing by the State and (name of provider); and

c)Neither State nor State's fiscal agent will in any way disadvantage Covered Product through usages or restrictions not equally applied to other (drug class) on the Preferred Drug List, unless otherwise mutually agreed upon in writing by the State and (name of provider); and

d) State shall have on file the fully executed CMS Approval Letter, attached hereto as Exhibit C and incorporated by reference.

2.2 **Preferred Drug List Documentation and Publication.** State shall communicate the inclusion of Covered Product on the Preferred Drug List to State Medicaid Program providers through the standard notification process.

2.3 **Invoicing.** State shall invoice (name of provider) for State Supplemental Rebates separately from CMS Rebates using the format set forth by CMS (Reconciliation of State Invoice format). State shall submit the State Supplemental Rebate invoice to (name of provider) within sixty (60) days after the end of each calendar quarter in which the Covered Product subject to such State Supplemental Rebate was paid for by State. Any amended invoice shall be submitted by State within fifteen (15) months after the end of the calendar quarter in which Covered Product was paid for by State.

2.4 **Patient Information.** State, its agents, employees and contractors shall not provide to (name of provider) any patient identifiable information or protected health information ("PHI") or any other information prohibited or regulated by laws or regulations governing confidentiality of medical or other information.

3. **(Name of Provider) Obligations**

3.1 **State Supplemental Rebate Payment.** (Name of provider) agrees to provide a State Supplemental Rebate for each of its Covered Products that is paid by the State and dispensed to Medicaid Recipients by Pharmacies for each calendar quarter that Covered Products are included in the Preferred Drug List. (Name of provider) shall pay to State the

State Supplemental Rebate amount in accordance with the formula set forth in Attachment B. Nothing in this Agreement shall be construed to relieve (name of provider) from its obligation to pay Medicaid Drug Rebates for utilization by State Medicaid Recipients. State shall remit the appropriate share of the State Supplemental Rebate payments made under the Agreement to CMS as required under it s approved state plan.

3.2 **Payment Timeframe.** (Name of provider) shall pay to State the State Supplemental Rebate amount to which State is entitled in accordance with the formula set forth in Attachment B, within thirty-eight (38) days after receipt of State's invoice.

3.3 **Incomplete Submission.** (Name of provider) shall have no obligation to pay State Supplemental Rebate amounts for claims that are not submitted as part of an invoice in accordance with Section 2.3 of this Agreement. (Name of provider) shall notify State or its designee of any incomplete submission within thirty-eight (38) days of (name of provider's) receipt of such submission pursuant to Section 2.3.

3.4 **Over/Underpayment.** If either party discovers an error in the payment of State Supplemental Rebates, it shall notify the other of such error. The parties shall attempt to reconcile all differences through discussion and negotiation; if that attempt fails, the parties will resolve their dispute in accordance with generally accepted applicable procedures followed by State or CMS in disputes concerning Medicaid Drug Rebates. Any overpayment shall be deducted from subsequent State Supplemental Rebates payable under this Agreement. In the event that no subsequent State Supplemental Rebates are payable, State will refund any such overpayment to (name of provider) within thirty (30) days of the parties' acknowledgement of the overpayment. (Name of provider) will remit any underpayment to State within thirty (30) days of the parties' acknowledgement of such underpayment.

3.5 **Discretion to Market.** Nothing in this Agreement shall be construed to prohibit (name of provider) from discontinuing production, marketing or distribution of any Covered Product or from transferring or licensing any Covered Product to a third party. It is understood that (name of provider) is liable for the payment of State Supplemental Rebates only for Covered Products (as identified by the 11-digit NDC code) distributed (directly or through the wholesale channel) to retail Pharmacies and dispensed to Medicaid Recipients. If (name of provider) elects to discontinue production, marketing or distribution of any Covered Product or to transfer or license any Covered Product to a third party, (name of provider) shall make every reasonable effort to notify State prior to such actions.

4. **Term and Termination**

4.1 **Effective Date.** This Agreement shall be effective as of (Month, day, year) and shall continue in force through (Month, day, year), unless it is terminated sooner pursuant to the following:

a) **Breach.** If either party commits a material breach of this Agreement, the non-breaching party shall deliver written notice mailed by certified mail, return receipt requested, of the alleged breach to the breaching party, with an opportunity for the breaching party to cure the breach during the thirty (30) day period following delivery. Failure to cure shall give the non-breaching party the right to cancel this Agreement at the end of the thirty (30) day period. The non-breaching party shall give the breaching party final written notice of the cancellation of this Agreement.

b) **Without Cause.** Either party may terminate this Agreement without cause as of the end of any calendar quarter by giving the other party ninety (90) days prior written notice.

4.2 **Accrued Obligations/Remedies.** The expiration or termination of this Agreement shall not affect any rights or obligations of the parties that have accrued prior to the effective date of such termination. The fact that either party exercises any right of termination it may have under this Agreement shall not prevent such party from pursuing any other remedy it may be entitled to in law or equity. Any remedy provided herein shall not be deemed an exclusive remedy unless expressly provided for as such.

4.3 **Execution, Amendment, and Waiver.** This Agreement shall be binding only upon signature by both parties. This Agreement, or any provision, may be altered, amended, or waived by a written amendment executed by both parties. Any alterations or amendments to the Agreement must be authorized by CMS.

5 **Miscellaneous**

5.1 **Record Keeping and Audit.** During the term of this Agreement and for a period of three (3) years thereafter, both parties to the Agreement shall use reasonable efforts at all times to ensure that they maintain accurate books, files and records relevant to this Agreement. At (name of provider's) written request, State shall make such information available for inspection by (name of provider) representatives or its designated auditors during regular business hours. Upon written request, each party shall otherwise have the right to inspect, up to once each year, all such relevant books and records of the other party to verify compliance with the terms of this Agreement.

5.2 **Indemnification.** (Name of provider) shall be responsible for and shall indemnify and hold State harmless from all claims resulting from the acts or omissions of (name of provider) and any Subcontractor. State shall be responsible and shall indemnify and hold (name of provider) harmless from all claims resulting from the acts or omissions of State.

5.3 **Confidentiality.** Except as otherwise may be required to be disclosed by law and in accordance with the Rebate Agreement between the Secretary of Health and Human Services and the drug manufacturers, information disclosed by (name of provider) in connection with this Agreement will not be disclosed by the State. Each party shall maintain the confidentiality of all the terms and conditions of this Agreement throughout the term hereof and for a period of three (3) years thereafter.

5.4 **Notices.** Any notice required or permitted to be given by either party to the other shall be given in person or sent by first class mail or express delivery, addressed to the other party at the address set forth below.

(Name of Provider):
Mailing Address

State:
_____
_____
_____
Attn: _____

5.5 **Force Majeure.** Noncompliance with any obligations hereunder due to force majeure, such as acts of God, laws or regulations of any government, war, civil commotion, destruction of production facilities and materials, fire, earthquake or storm, labor disturbances, shortage of materials, failure of public utilities or common carriers, and any other causes beyond the reasonable control of the parties, shall not constitute breach of contract.

5.6 **Assignment.** Neither party shall have the right to assign this Agreement to a third party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any permitted assignee shall assume all obligations of its assignor under this Agreement. No assignment shall relieve any party of responsibility for the performance of any obligations that have accrued prior to such assignment.

5.7 **No Waiver of Rights.** The failure of either party to insist upon the strict observation or performance of any provision of this Agreement or to exercise any right or remedy shall not impair or waive any such right or remedy in the future. Every right and remedy given by this Agreement to the parties may be exercised from time to time as often as appropriate.

5.8 **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties as authorized by CMS. This Agreement (including Attachments) may not be amended or modified except upon the written agreement of both parties.

5.9 **Governing Law.** This Agreement shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be proper only in Thurston County, Washington.

5.10 **Effect of Future Laws.** In the event of the enactment, promulgation, rescission, modification or interpretation of any law or regulation after the date hereof which would (a) materially adversely affect the manner in which either party is obligated to perform under this Agreement, (b) adversely affect for either party the net prices or State Supplemental Rebates or other terms applicable under this Agreement, or (c) have the effect of requiring the net prices or State Supplemental Rebates or other terms applicable under this Agreement to be extended or offered to any third party, each party shall have the right to enter into good faith negotiation with the other in order to seek to agree on reasonable terms for maintaining the intent of the Agreement affected by such enactment, promulgation, etc. Agreement on any such terms shall be in the sole discretion of each party. If the parties do not agree within sixty (60) days of a party's written request for negotiations, either party may terminate this Agreement with respect to the affected Covered Products upon expiration of the sixty (60) day period, with immediate effect.

5.11 **Compliance with Law.** In connection with its respective obligations under this Agreement, each party shall comply with all applicable federal, state and local laws and regulations, including without limitation any disclosure or consent requirements.

5.12 **Authority.** State and (name of provider) each represent and warrant to the other that the person signing below has all requisite legal power and authority to execute this Agreement on behalf of each party and each party shall thereby be bound.

5.13 **Best Price Contingency.** The effectiveness of this Agreement shall be contingent on (name of provider's) Best Price and AMP not being affected by State Supplemental Rebates.

5.14 **CMS Approval Contingency.** The effectiveness of this Agreement shall be contingent on receipt of CMS approval by State, as evidenced by the CMS Approval Letter, attached hereto as Exhibit C and incorporated by reference.

IN WITNESS WHEREOF, this Agreement has been executed by the parties set forth below:

(Name of Provider)	**State of Washington Department of Social and Health Services**
_____	_____
Name	Name
Title: _____	Title: _____
Date: _____	Date: _____

ATTACHMENT A

Covered Products

The products to which this Supplemental Rebate Agreement shall apply are the following:

NDC	Brand	Strength	Package Description

ATTACHMENT B

New offer is for net cost for exclusive preferred drug_____

New offer is for net cost for one of two preferred drugs_____

New offer is for net cost for one of three preferred drugs_____

New offer is for net cost for reference pricing_____

Rebate Formula

Supplemental Rebate shall be calculated on a calendar quarter basis according to the following formula and will be lower than or equal to the net cost of the Competitive Product for reference pricing:

Supplemental Rebate =([i]Ingredient Reimbursement) – ([ii]CMS Rebate) - (Net Cost)

(_____QuarterYear) net cost for (name of product):
Net Cost for (name/dosage of product) = (price)
Net Cost for (name/dosage of product) = (price)

i Ingredient Reimbursement based on the Average Wholesale Price (AWP) as published by First DataBank on the first day of a calendar quarter for the quarter in which the rebate applies.

ii CMS Rebate as calculated and provided to State by CMS on a calendar quarter for the quarter in which the rebate applies.

ATTACHMENT C

CMS Approval Letter

Email
From: Maria Garza [MGarza@cms.hhs.gov]
Sent: Tuesday, February 01, 2005 9:18 AM
Cc: David Meacham; MYERSEA@dshs.wa.gov
Subject: Fwd: Proposed Pfizer Amendment to Supplemental Drug Rebate Agreement

Attachments: WASRAPFIZER.DOC

Dr. Thompson,

We have completed our review of the proposed Pfizer amendments to eliminate section 2.5 and 2.6 to Washington's approved supplemental rebate agreement. Based upon our review the proposed amendments are not substantive, as revised and continue to be consistent with the respective standards established by CMS in the September 18, 2002, State Medicaid Directors Letter. Consequently, the submission of a State Plan Amendment is not required. However, any subsequent changes to this agreement must be submitted to CMS for review.

Please forward a copy of the agreement confirming this is the one approved for use with Pfizer.

Once again thank you for your patience during the review process.

Thanks for your patience.
Kim & Maria